

In the Court of Sub-Judge 1st, Patna City

T.P.S. No. 97/1999

Order

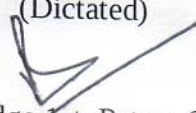
19.07.2023 Attendance on behalf of both parties has been filed. A petition under order 22 rule 4(4) of CPC is filed on behalf of the plaintiff. Learned advocate appearing on behalf of plaintiff submits that the plaintiff has filed this suit for passing of preliminary decree to the extent of half share after partition in described in scheduled 2 property of the plaint. It is further submitted that vide order dt. 23.05.2003 ex-parte order passed against the defendant except defendants no. 2, 4, 9, 12, 14, 60 & 71. Further, it is stated that ex-parte order against substituted defendant no. 1 to 1b was also passed on 30.10.2015. It is further submitted that defendant no. 6 Darshan Singh has also died and defendant no. 22 Budhan Singh also died and his only son Bipin Singh is on record. It is further submitted that defendant no. 22 has neither filed the suit is proceeding and ex-parte against defendant no. 6. Accordingly it is prayed that substitution of legal heirs of defendant no. 6 Darshan Singh may be exempted under order 22 rule 4(4) of CPC. Learned advocate on behalf of plaintiff has relied upon judgment of Hon'ble Patna High Court passed in Rajnath Sahgal & ors. Vs. Shiva Prasad Sinha and ors. AIR 1979 PAT 239.

A rejoinder on behalf of defendant no. 4, 7, 11 & 60 is filed wherein learned advocate has submitted that plaintiff has not given full address of married daughter of defendant no. 6 late Darshan Singh so the petition is not complete in the eye of law. Further, it is submitted that plaintiff's petition is false and concocted. Accordingly, it is requested to reject the said petition.

Heard both parties and perused the record. It transpires that Title Partition Suit is filed in year of 1999 and same is pending for argument. Further, it transpires that the said title partition suit has many defendants out of which only

defendant no. 2, 4, 9, 12, 14, 60 & 71 appeared and filed their WS. Apart from these defendants, the suit is proceeding ex-parte against all defendants. Further also transpires that since the year of institution of this title partition suit in 1999, other defendants have never appeared and have not contested the suit. The record is pending for final argument. In light of above facts and circumstances of the case and also in light of judgment of Hon'ble High Court filed on behalf plaintiff, this court is of opinion that there is no necessity of substituting the legal heirs of deceased defendants and benefit of order 22 rule 4(4) CPC may be lawfully given to the plaintiff. Accordingly plaintiff's petition dt. 13.02.2023 under order 22 Rule 4(4) is hereby allowed. Both parties are directed to come for final argument. Defendants is directed to begin the argument. Put for argument on behalf of the defendant. Put up 05.26.23

(Dictated)


Sub-Judge 1st, Patna City